

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 21, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Redemann)
Office of the General Counsel (Brown)

RE: Docket No. 050192-WS – Application for certificates to provide water and wastewater service in Sumter County by Central Sumter Utility Company, L.L.C.

AGENDA: 08/02/05 – Regular Agenda – Proposed Agency Action on Issue 1 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 8/24/05 – Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050192.RCM.DOC

Case Background

On March 22, 2005, Central Sumter Utility Company, L.L.C. (Central Sumter or utility) filed its application for original water and wastewater certificates in Sumter County. The area is in the Southwest Florida Water Management District (SWFWMD) and is not in a water use caution area. The utility anticipates serving approximately 16,144 water equivalent residential connections (ERCs) and 13,700 wastewater ERCs when it reaches build out in 2014.

The utility's initial application was found to be deficient. The utility corrected the deficiency on May 27, 2005, making this the official filing date of the completed application. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application

for a certificate of authorization within 90 days after the official filing date of the completed application. Therefore, this application must be ruled upon by August 24, 2005.

The affiliated developer, The Villages of Lake-Sumter, Inc. (VLSI or developer) is developing the service territory as a Planned Unit Development, an expansion of The Villages of Sumter Development of Regional Impact Master Plan (DRI). The developer plans to construct single family detached and attached homes in a retirement community. The primary commercial facilities that will be constructed include offices, retail stores, restaurants, institutional/educational uses, medical facilities and recreational facilities.

Central Sumter was formed on January 27, 2004. Its application indicates that construction will begin in 2009 and will be completed in 2014. The developer and utility anticipate that the first residents will be moving into the service area in 2009, with the system operating at 80% of design capacity in 2012.

The water treatment plant will be designed to supply the maximum demand plus the average demand of peak hourly flows. The plant will consist of 3-12" wells that will provide 1.453 million gallons per day (MGD) of potable water. The water treatment will consist of odor control, pH adjustment, chlorination and storage. The gas chlorination system will be used to maintain a disinfectant residual in the distribution system. Ground and elevated storage tanks will be constructed to provide water during peak hours. The ground storage tank will be equipped with high service pumps to deliver water to customers and maintain adequate distribution system pressure.

The wastewater treatment plant will be a 2.000 MGD facility, with the ability to provide 1.542 MGD maximum month average daily flow (MMADF). Wastewater will be treated using an aerobic treatment system, with an oxidation ditch design and disposal at onsite rapid infiltration basins (RIBs). The RIBs will only be used during wet weather periods and when the treated effluent does not meet public reuse standards as required by the Florida Department of Environmental Protection. The wastewater site will also have effluent reuse facilities to provide irrigation water for golf courses within the development.

Central Sumter has requested a temporary waiver from several requirements of Rule 25-30.033, Florida Administrative Code, in order to bifurcate the certification and rate setting aspects of the case. In that way, certificates can be issued to Central Sumter within 90 days as required by Section 367.031, Florida Statutes, and Central Sumter will be able to proceed with the permitting for its water use permit. The Commission would set initial rates for the new utility at a later time. This recommendation addresses the temporary waiver request and the application for original water and wastewater certificates. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Central Sumter's petition for a temporary waiver of Rules 25-30.033 (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code?

Recommendation: Yes. Central Sumter's petition for a temporary waiver of Rules 25-30.033 (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code, should be granted. (Brown)

Staff Analysis: Rules 25-30.033 (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code, directs the applicant for an original certificate to file information necessary for setting initial rates and charges, including: the filing of the original and two copies of tariffs, a detailed financial statement, a cost study supporting proposed rates and charges, a schedule showing the projected costs of the systems, a schedule showing projected operating expenses, and a schedule showing the projected capital structure. Central Sumter has asked for a temporary waiver of those parts of the rule so that it may receive its certificates and then proceed with water use permitting. When Central Sumter has received its permits it will be able to provide accurate cost estimates, schedules and cost studies to support initial rates and charges.

Section 120.542, Florida Statutes, authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and that strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provisions pertaining to the above-mentioned rules are Sections 367.031 and 367.045, Florida Statutes. Section 367.031 requires each utility seeking to provide water and wastewater service to obtain a certificate of authorization from the Commission prior to obtaining permits from the Department of Environmental Protection and water management districts. Further, Section 367.045(5)(a), Florida Statutes, states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, Florida Statutes, is to ensure that a utility has the financial and technical ability to provide service and that there is a need for service in the proposed service area.

While Central Sumter has requested a temporary waiver for filing part of the required financial and technical information regarding rate setting, as explained in Issue 2, Central Sumter has provided sufficient information to demonstrate that it will have the financial and technical ability to provide water and wastewater service to the proposed service area. The development planned for the Central Sumter territory will need water and wastewater service in 2009. The development will consist of 10,725 residential units and 3,889 commercial units to be developed in 2009 through 2014. The applicant states that the only other utilities nearby are North Sumter Utility Company, L.L.C., (North Sumter) which is a related party, and the City of Wildwood. The applicant further claims that due to the limited capacities and the remote location of the proposed service area it is more cost effective to construct new water and wastewater plants than to expand the North Sumter system. According to the application, the City of Wildwood has indicated that it would not provide service to the proposed service territory. Central Sumter states that although it does not expect to provide service for four years, the Southwest Florida

Water Management District has required the company to obtain a certificate from the Commission before it will review Central Sumter's water use permit. The conundrum Central Florida faces is that it cannot procure a water use permit until it procures a Commission certificate. If the Commission does not temporarily waive its rules, however, Central Sumter cannot receive a certificate without providing detailed facility cost information, but it cannot calculate detailed facility cost information until it receives its water and other permits. The hardship created by this circumstance is Central Sumter's inability to proceed with the development of its water and wastewater facilities to serve the planned development. No protests have been received regarding Central Sumter's application or petition for temporary rule waiver.

When a utility has met the criteria set forth in Section 120.542, Florida Statutes, the Commission has granted a temporary waiver of the rules regarding establishment of initial rates and charges and bifurcated the two parts of its certification proceedings. See, Order No. PSC-98-1644-FOF-WS, issued December 7, 1998 in Docket No. 980876-WS In re: Application for certificate to operate water and wastewater facility in Marion County by Ocala Springs Utilities, Inc. If the utility is unable to meet the underlying purpose of the statute, however, the Commission has not granted a rule waiver. See Order No. PSC-99-1603-PAA-WS, issued August 16, 1999, in Docket No. 990696-WS, In re: Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation, (utility had not shown the need for service or the ability to provide it). In the instant case, Central Sumter has met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes, because it has demonstrated the technical and financial ability to provide service and a need for service in the proposed territory. In addition, Central Sumter has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, are strictly applied.

Central Sumter has requested a waiver of the rules until it receives its other permits and is closer to commencing operations. Central Sumter states that it will file its proposed tariffs and other required financial schedules to set initial rates sufficiently in advance of beginning operations, so that the Commission will have sufficient time for review. In addition, Central Sumter has agreed to provide annual status reports to the Commission on the development of the utility. Staff recommends that the utility has met the requirements found in Section 120.542, Florida Statutes, and the Commission should grant Central Sumter's petition for temporary waiver of Rules 25-30.033 (1) (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code, until it has completed its permitting and is closer to commencement of operations.

Issue 2: Should the Commission grant the application of Central Sumter Utility Company, L.L.C. for water and wastewater certificates?

Recommendation: Yes. The Commission should grant Central Sumter Utility Company, L.L.C. Certificate Nos. 631-W and 540-S to serve the territory described in Attachment A. The utility should file an executed and recorded copy of the warranty deed for the land for the water and wastewater facilities within 30 days of the issuance date of the Order granting the certificates. (Johnson, Redemann, Brown)

Staff Analysis: As stated in the case background, Central Sumter filed an application for original water and wastewater certificates to provide service in Sumter County on May 27, 2005. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for original certificates.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The notice of application for an initial certificate of authorization for water and wastewater certificates was mailed to proposed customers on April 6, 2005. On May 10, 2005, the Commission received one letter from a resident of the area that stated that he did not need the services of the utility. In the letter the resident did not object to the certification of the utility, only to receiving service from the utility. No objections to the notice of application have been received and the time for filing such has expired. On June 24, 2005, staff sent a certified letter to the resident asking for a written response by July 5, 2005, if the resident did object to the certification. In the letter staff explained that the resident is not obligated or being forced to connect to the utility. As of this writing the resident has not responded to staff's letter. In addition, a representative of Central Sumter informed staff that they would not force the objector to connect to the utility system and offered to delete the area from the utility service area. Central Sumter's attorney also confirmed by letter that the resident would not be forced to connect to the utility.

Rule 25-30.033(1) (j), Florida Administrative Code, allows an applicant, who does not own the land on which the utility's facilities will be located, to submit a contract for the purchase and sale of the land with an unexecuted copy of the warranty deed, provided the applicant files an executed and recorded copy of the deed within 30 days after the Order granting the certificate. Accordingly, the applicant has submitted a copy of the contract for the purchase and sale of the land and an unexecuted copy of the warranty deed. Counsel for the utility has assured staff that the closing will take place and a copy of the executed and recorded warranty deed will be filed with the Commission within 30 days of the Commission granting certificates to the utility.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.033(1)(l), (m) and (n), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

The applicant appears to have the financial and technical ability to provide service to the proposed service area. The applicant is affiliated with the developer of the service area which is providing the start up funding and funding to cover operation during the initial years. The

application includes a letter from the Treasurer of VLSI, committing to the financial support of the utility and a copy of its most recent financial statement. Staff has reviewed the financial statements of VLSI and it appears that there are adequate resources to support the utility during the initial years. In addition, the letter indicated that funding would come from the collection of CIAC and the issuance of bonds. As evidence of VLSI's financial viability, the applicant stated that VLSI financed and controlled Little Sumter Utility Company, L.L.C. and North Sumter Utility Company, L.L.C., which are both successful utilities.

Regarding the applicant's technical ability, VLSI indicated that it will make the financial and operating commitment necessary for Central Sumter to be successful in providing water and wastewater service to the future residents in the proposed service territory. The applicant will retain licensed professionals for construction, management and operation of the utility systems.

According to the application, there is currently a need for water and wastewater service within the proposed service territory. The development will consist of 10,725 residential units and 3,889 commercial units to be developed in 2009 through 2014. The applicant stated that the only other utilities nearby are North Sumter, which is a related party, and the City of Wildwood. Further, the applicant claims that due to the limited capacities and the remote location of the proposed service area it is more cost effective to construct new water and wastewater plants than to expand the North Sumter Utility system. According to the application, the City of Wildwood has indicated that it would not provide service to the proposed service territory. The application states that the provision of service in the proposed service territory, as outlined in the application, is consistent with the water and wastewater sections of the local comprehensive plan for Sumter County, as approved by the Department of Community Affairs (DCA). The DCA reviewed the application filed by the utility, and commented that the proposal to provide water and wastewater service by Central Sumter was consistent with the Sumter County Comprehensive Plan.

Based on the above information, staff believes it is in the public interest to grant the application for original water and wastewater certificates. Accordingly, staff recommends that Central Sumter Utility Company be granted Certificate Nos. 631-W and 540-S to serve the territory described in Attachment A. The utility should file an executed and recorded copy of the warranty deed for the land for the water and wastewater facilities within 30 days of the issuance date of the Order granting the certificates.

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Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending receipt of the annual status reports, the executed and recorded copy of the warranty deed, and to establish the setting of initial rates, charges and return on equity. (Brown)

Staff Analysis: The docket should remain open pending receipt of the executed and recorded copy of the warranty deed and to allow for the setting of initial rates, charges and return on equity. As discussed earlier, the company has requested that the certification and the rate setting process be bifurcated. Therefore, staff recommends that the docket remain open for the setting of initial rates, charges, and return on equity at a later date.

CENTRAL SUMTER UTILITY COMPANY
WATER AND WASTEWATER SERVICE AREA
SUMTER COUNTY

THE SOUTH 1/2 OF SECTION 1, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY FLORIDA, LYING SOUTH OF C.R. 466-A.

AND

THE SOUTH 1/2 OF SECTION 2, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, LESS RIGHT-OF-WAY FOR C.R. 466-A.

AND

THE SOUTH 1/2 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA, LESS RIGHT-OF-WAY FOR C.R. 466-A AND LESS BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4; RUN WEST 295.00 FEET, SOUTH 295.00 FEET, EAST 295.00 FEET, NORTH 295.00 FEET TO THE BEGINNING.

AND

THE SOUTHEAST 1/4 AND THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA; LESS RIGHT-OF-WAY FOR C.R. 466-A.

AND

THE NORTH 1/2 OF THE SOUTHWEST 1/4 LESS RIGHT-OF-WAY ON NORTH SIDE FOR CR 466-A, AND LESS RIGHT-OF-WAY ON WEST SIDE FOR CR 139 AND LESS THE SOUTH 15.00 FEET OF THE WEST 789.00 FEET OF THE NORTH 1/2 OF THE SOUTHWEST 1/4, AND LESS THE NORTH 466.70 FEET OF THE SOUTH 481.70 FEET OF THE WEST 490.70 FEET OF THE NORTH 1/2 OF SAID SOUTHWEST 1/4.

AND

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 SOUTH, RANGE 23 EAST.

AND

THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA, LYING

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NORTH OF THE S.A.L. RAILROAD RIGHT-OF-WAY, LESS OLD STATE ROAD 44 RIGHT-OF-WAY.

LESS AND EXCEPT THE FOLLOWING:

COMMENCE AT THE NORTHWEST CORNER OF THE EAST 1/2 OF SOUTH 1/2 OF NORTHEAST 1/4 OF SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 SOUTH, RANGE 23 EAST, FOR A POINT OF BEGINNING; 1) THENCE RUN S00 DEG 03 MIN 45 SEC WEST ALONG THE WEST LINE OF THE EAST 1/2 OF SOUTH 1/2 OF NORTHEAST 1/4 OF SAID SECTION 8, A DISTANCE OF 4.79 FEET; 2) THENCE RUN S38 DEG 07 MIN 08 SEC WEST A DISTANCE OF 35.12 FEET; 3) THENCE RUN S69 DEG 08 MIN 06 SEC WEST A DISTANCE OF 5.77 FEET TO THE NORTH RIGHT OF WAY LINE OF HWY. 44A; 4) THENCE RUN N65 DEG 34 MIN 36 SEC WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 84.16 FEET, TO THE NORTH LINE OF SOUTH 1/2 OF NORTHEAST 1/4 OF SOUTHEAST 1/4 OF SAID SECTION 8; 5) THENCE RUN S89 DEG 49 MIN 31 SEC EAST, ALONG SAID NORTH LINE A DISTANCE OF 103.70 FEET, TO THE POINT OF BEGINNING TO CLOSE.

AND

THE EAST 1/2 OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 23 EAST, LESS THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4; THE SOUTH 3/4 OF THE NORTHWEST 1/4; THE WEST 1/2 OF THE SOUTHWEST 1/4, LESS ANY PORTION THEREOF LYING WITHIN THE RIGHT-OF-WAY FOR COUNTY ROAD 139 OR COUNTY ROAD 44A, ALSO LESS RAILROAD RIGHT-OF-WAY; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4; THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SOUTHWEST 1/4 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SOUTHWEST 1/4 LYING SOUTH OF RAILROAD.

AND

BEGIN AT THE NORTHWEST CORNER OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 23 EAST; THENCE RUN SOUTH 440.00 FEET, EAST 396.00 FEET, NORTH 440.00 FEET. WEST 396.00 FEET TO THE POINT OF BEGINNING.

ALL OF THE ABOVE LESS ANY PORTIONS THEREOF LYING WITHIN THE RIGHT-OF-WAY FOR COUNTY ROAD 139 OR COUNTY ROAD 44A OR WITHIN THE RIGHT-OF-WAY FOR THE C.S.X. TRANSPORTATION RAILROAD RIGHT-OF-WAY.

AND

ALL OF SECTION 10, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA.

AND

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ALL OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA.

AND

ALL OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY FLORIDA.

AND

ALL OF SECTION 13, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY FLORIDA; AND LESS ANY PORTION THEREOF LYING WITHIN COUNTY ROAD RIGHT-OF-WAY.

AND

THE WEST 1/2 OF THE NORTHWEST 1/4; THE NORTHEAST 1/4 OF THE NORTHWEST 1/4; THE EAST 1/2 OF THE SOUTHEAST 1/4; THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA.

AND

THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 LYING EAST OF THE RAILROAD RIGHT-OF-WAY, THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 LYING NORTH AND EAST OF THE RAILROAD RIGHT-OF-WAY, IN SECTION 16, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA; LESS TERMINAL LANDS; LESS ANY PORTIONS THEREOF LYING WITHIN THE RIGHT-OF-WAY FOR COUNTY ROAD 44-A.

AND

THE WEST 3/4 OF THE NORTHEAST 1/4 OF NORTHWEST 1/4, LYING NORTH OF STATE ROAD 44, LESS ANY PORTION THEREOF LYING WITHIN THE RIGHT-OF-WAY FOR COUNTY ROAD 44 AND THE SOUTHEAST 1/4 OF NORTHWEST 1/4 LYING NORTH OF STATE ROAD 44, ALL IN SECTION 16, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA.

AND

BEGIN AT SOUTHEAST CORNER OF NORTHEAST 1/4 OF NORTHWEST 1/4. RUN S89°50'W, 331.20 FEET, NORTH 797.68 FEET, S61°21'21"E, 835.26 FEET, SOUTH 395.15 FEET, S89°50'W, 401.84 FEET TO POINT OF BEGINNING, SECTION 16, TOWNSHIP 19 SOUTH, RANGE 23 EAST.

AND

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THE WEST 1/2 OF WEST 1/2 NORTH OF STATE ROAD 44 OF SECTION 16, TOWNSHIP 19 SOUTH, RANGE 23 EAST, LESS ROAD RIGHT-OF-WAY.

AND

THAT PART OF THE NORTHEAST 1/4 OF NORTHEAST 1/4 LYING NORTH OF STATE ROAD 44, LESS ROAD RIGHT-OF-WAY ON WEST END, SECTION 17, TOWNSHIP 19 SOUTH, RANGE 23 EAST.

AND

THAT PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SECTION 23, TOWNSHIP 19 SOUTH, RANGE 23 EAST, IN SUMTER COUNTY, FLORIDA, LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF THE SEABOARD AIRLINE RAILROAD.

AND

THAT PART OF THE WEST 3/4 OF SAID SECTION 24, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA, LYING NORTH OF THE RAILROAD RIGHT-OF-WAY.

CONTAINING 4908.95 ACRES, MORE OR LESS.